

AN ORDINANCE 2006-05-11-0575

**RATIFYING THE EXECUTION OF A \$46,000.00 PROFESSIONAL SERVICES CONTRACT WITH ROBERT L. WATSON, Ph.D., J.D. FOR ORGANIZATIONAL AND PLANNING SERVICES PROVIDED TO THE COMMUNITY ECONOMIC REVITALIZATION AGENCY, IN CONNECTION WITH THE NEIGHBORHOOD COMMERCIAL REVITALIZATION PROGRAM, FUNDED BY THE GENERAL FUND.**

\* \* \* \* \*

**WHEREAS,** the San Antonio City Council created the Neighborhood Commercial Revitalization (NCR) Program in 1998 to empower community groups to restore productivity of underused neighborhood urban business areas; and

**WHEREAS,** the goals of the NCR Program are to support economic reinvestment in business corridors of San Antonio's urban core, create economic and employment opportunities in the inner city, and improve the physical appearance of these areas; and

**WHEREAS,** the participant organizations develop and implement economic development plans with strategies in four major areas of effort; and

**WHEREAS,** the four major areas of effort include promoting and marketing the business district to potential customers, preserving and maximizing the districts' unique physical assets through design and planning of private and public improvements, providing assistance to promote business retention and attraction, and organizing together to recapture the economic vitality that once characterized the areas; and

**WHEREAS,** the Community Economic Revitalization Agency (CERA) currently has 3 NCR contracts to provide revitalization activities and the City desires to assist CERA with organizational and planning issues, through the services of a consultant; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The execution of a \$46,000.00 professional services contract and any payments made to Robert L. Watson, Ph.D., J.D. for organizational and planning services provided to the Community Economic Revitalization Agency, in connection with the Neighborhood Commercial Revitalization Program, funded by the General Fund, is hereby ratified. A copy of said contract is attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** Funds for this expenditure are available in Fund 11001000, General Fund, Cost Center 6102050001, Neighborhood Commercial Revitalization, General Ledger 5201040, Fees to Professional Contractors.

**SECTION 3.** Payment not to exceed \$46,000.00 is authorized to Robert L. Watson, Ph.D., J.D. and should be encumbered with a purchase order.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance shall be effective on and after May 21, 2006.

PASSED AND APPROVED this 11<sup>th</sup> day of May, 2006.



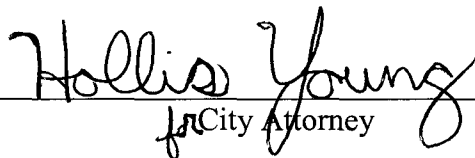
M A Y O R

**PHIL HARDBERGER**

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
for City Attorney

**PROFESSIONAL SERVICES CONTRACT**

STATE OF TEXAS

§  
§  
§

COUNTY OF BEXAR

This Contract is made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager, and Robert L. Watson, Ph.D., J.D. (hereinafter referred to as "CONSULTANT") as authorized by City Council on \_\_\_\_\_, pursuant to Ordinance No. \_\_\_\_\_.

**WHEREAS**, the CITY has negotiated with the CONSULTANT to provide organizational and planning services (hereinafter referred to as "the Project") to the Community Economic Revitalization Agency (CERA) in connection with the City's Neighborhood Commercial Revitalization Target Areas (hereinafter referred to as "the Target Areas"); and

**ACCORDINGLY**, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishments of the tasks hereinafter described.

**I. TERM**

- 1.1 This Contract shall commence on March 27, 2006 and shall terminate on September 30, 2006 or upon satisfactory completion by Consultant, as determined solely by the City, of all activities and services set forth in Article III herein.

**II. CONTRACT PRICING AND BILLING**

- 2.1 The total of all payments and obligations made and incurred by CITY under this Contract, in consideration for CONSULTANT's performance of services under this Contract, shall not exceed the total amount of FORTY-SIX THOUSAND AND NO/100 DOLLARS (\$46,000.00).
- 2.2 The CONSULTANT understands and agrees that CITY will pay CONSULTANT for performance of services pursuant to the payment schedule set forth below in Section 2.3, and that CONSULTANT shall be required to submit invoices as required by this payment schedule. The information contained in each of the invoices submitted by CONSULTANT to CITY shall be in such detail as may be required by CITY. Upon approval of each invoice by CITY, CITY will pay CONSULTANT no later than thirty (30) days after the date of such approval, provided however that such approval shall be based upon satisfactory completion of the work set forth in Article III herein, and according to the payment schedule set forth in Section 2.3 herein. The question of satisfactory completion of said work shall be determined by the City alone and its decision shall be final.

2.3 The payment schedule by CITY to CONSULTANT for services performed pursuant to this CONTRACT shall be as follows:

2.3.1 CONSULTANT shall submit the first invoice for payment in an amount not to exceed SEVEN THOUSAND SIX HUNDRED SIXTY-SIX AND NO/100 DOLLARS (\$7,666.00) to CITY by April 3, 2006. CITY shall pay CONSULTANT for the services performed and for which the invoice is submitted in accordance with Section 2.2 herein, subject to CITY's approval of the invoice and CITY's prior receipt of CONSULTANT's proof of completion of the following deliverables:

2.3.1.1 Proposed CERA bylaws revisions.

2.3.1.2 Updated CERA approved roster of board members.

2.3.2. CONSULTANT shall submit the second invoice for payment in an amount not to exceed SEVEN THOUSAND SIX HUNDRED SIXTY-SIX AND NO/100 DOLLARS (\$7,666.00) to CITY by May 3, 2006. CITY shall pay CONSULTANT for the services performed and for which the invoice is submitted in accordance with Section 2.2 herein, subject to CITY's approval of the invoice and CITY's prior receipt of CONSULTANT's proof of completion of the following deliverables:

2.3.2.1 Proof that CONSULTANT hosted two CERA board trainings that resulted in clearly identifying roles and responsibilities for board members of CERA, and this proof shall include CONSULTANT submitting evidence of trainings and documents explaining the various roles.

2.3.3. CONSULTANT shall submit the third invoice for payment in an amount not to exceed SEVEN THOUSAND SIX HUNDRED SIXTY-SIX AND NO/100 DOLLARS (\$7,666.00) to CITY by June 3, 2006. CITY shall pay CONSULTANT for the services performed and for which the invoice is submitted in accordance with Section 2.2 herein, subject to CITY's approval of the invoice and CITY's prior receipt of CONSULTANT's proof of completion of the following deliverables:

2.3.3.1 Documentation that all vacant CERA board member positions are filled.

2.3.3.2 CERA approved rosters of the following committees, with all three of the NCR districts each having their own set of committees: Organization, Marketing, Business Development, and Planning and Design.

2.3.4. CONSULTANT shall submit the fourth invoice for payment in an amount not to exceed SEVEN THOUSAND SIX HUNDRED SIXTY SIX AND NO/100 DOLLARS (\$7,666.00) to CITY by July 3, 2006. CITY shall pay CONSULTANT for the services performed and for which the invoice is submitted in accordance with Section 2.2 herein, subject to CITY's approval of the invoice and CITY's prior receipt of CONSULTANT's proof of completion of the following deliverables:

2.3.4.1 CERA approved rosters of any advisory committees that include business members from the respective Target Areas.

2.3.4.2 Proof that CONSULTANT held at least one training for each committee to detail roles and responsibilities, and submit evidence of such trainings.

2.3.5. CONSULTANT shall submit the fifth invoice for payment in an amount not to exceed SEVEN THOUSAND SIX HUNDRED SIXTY SIX AND NO/100 DOLLARS (\$7,666.00) to CITY by August 3, 2006. CITY shall pay CONSULTANT for the

services performed and for which the invoice is submitted in accordance with Section 2.2 herein, subject to CITY's approval of the invoice and CITY's prior receipt of CONSULTANT's proof of completion of the following deliverables:

2.3.5.1 CERA approved revised bylaws as necessary

2.3.6. CONSULTANT shall submit the sixth invoice for payment in an amount not to exceed SEVEN THOUSAND SIX HUNDRED SEVENTY AND NO/100 DOLLARS (\$7,670.00) to CITY by September 3, 2006. CITY shall pay CONSULTANT for the services performed and for which the invoice is submitted in accordance with Section 2.2 herein, subject to CITY's approval of the invoice and CITY's prior receipt of CONSULTANT's proof of completion of the following deliverables:

2.3.6.1 CERA board approved Visioning and Strategic Plan to include:

Organization's mission, Strategic Plan (short-term and long-term goals), short-term focus on the NCR requirements for each district, and long-term focus on the organizational business plan, fundraising plan, and community development versus economic development mission.

- 2.4 Notwithstanding any other provision of this Contract, final payment due under this Contract will not be paid until all the work, reports, data, documents and any other unfinished services necessary to complete performance under the Contract have been received, performed and are approved by the CITY, as meeting all the tasks required hereunder in Article III and pursuant to the payment schedule set forth in Section 2.3 herein. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.
- 2.5 CITY shall not be obligated or liable under the Contract to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.6 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the CONTRACT referenced in Section 2.1 of the CONTRACT.

### III. SCOPE OF SERVICES

- 3.1 The CONSULTANT shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the responsibilities of CONSULTANT as set forth in this Article III. Goals, objectives and performance standards for the Project will be established by the CITY'S Department of Neighborhood Action and CONSULTANT agrees to comply with said goals, objectives and performance standards.
- 3.2 The CONSULTANT shall perform the following services and fulfill the following responsibilities pertaining to the Project under this CONTRACT:
- 3.2.1 Reorganize the Community Economic Revitalization Agency (CERA) Board and assist in creating organizational structure to follow the Neighborhood Commercial Revitalization (NCR) model.
- 3.2.2 Set up the following committees for CERA for each of the NCR Target Areas: Organization, Marketing, Business Development, Planning and Design.

- 3.2.3 Consider setting up advisory committees, which would include business members from the respective Target Areas.
- 3.2.4 Ensure diverse representation where Target Area business and commercial stakeholders are represented.
- 3.2.5 Revise the bylaws of CERA as necessary to meet the mission of the organization and the requirements of the NCR contracts.
- 3.2.6 Focus on improving development of the board members of CERA.
- 3.2.7 Establish a plan for Board recruitment in order to fill all vacant Board membership positions.
- 3.2.8 Develop board roles and responsibilities for CERA, and define these roles and responsibilities as necessary.
- 3.2.9 Ensure that board positions are filled with respect to each category, as defined by bylaws.
- 3.2.10 Assist the board with reviewing, reevaluating, and/or modifying CERA's mission.
- 3.2.11 Develop a visioning and strategic plan for CERA.
- 3.2.12 Insure that the strategic plan for CERA includes goals and objectives that are both short-term and long-term in nature.
- 3.2.13 Develop short term goals for CERA.
- 3.2.14 Focus on the NCR requirements for CERA.
- 3.2.15 Develop long term goals for CERA that position CERA to acquire larger responsibilities beyond the NCR.
- 3.2.16 Create an organizational business plan for CERA.
- 3.2.17 Develop fundraising goals and plans for CERA.
- 3.2.18 Work with CERA on the areas of community development versus economic development.

#### IV. TERMINATION

- 4.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 **TERMINATION BY NOTICE:** The CONTRACT may be canceled by CITY upon written notice to the CONSULTANT, and cancellation of the CONTRACT shall become effective on the date specified in said notice, or, if an effective date is not specified in the notice, then immediately upon receipt of said notice by the CONSULTANT. The CONTRACT may be canceled by the CONSULTANT upon written notice to the CITY, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days from the date such notice is received by the CITY. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 4.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this

CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

- 4.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 4.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that this CONTRACT is terminated by either party hereto for any reason, including termination under Section 4.2 herein, and the work required hereunder of CONSULTANT is not fully completed to the satisfaction of CITY in accordance with the terms of this CONTRACT, then CONSULTANT shall refund any and all sums of money paid by CITY to CONSULTANT, or that portion of the CONTRACT amount that represents compensation attributable to services not satisfactorily performed by CONSULTANT, as determined by CITY in its sole discretion, within ten (10) working days of CITY'S written request therefor.

## **V. INDEPENDENT CONTRACTOR**

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT only, and not of the CITY, and any and all

claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the CONSULTANT.

## VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this Contract shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 6.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 6.4 If the CONSULTANT receives inquiries regarding documents within his possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

## VII. OWNERSHIP OF DOCUMENTS

- 7.1 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.2 The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONSULTANT and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be



construed to require CONSULTANT to transfer any ownership interest in Consultant's best practice and benchmarking information to the CITY.

### VIII. INTELLECTUAL PROPERTY

8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

8.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONSULTANT will immediately:

8.2.1 Either:

- a) obtain, at CONSULTANT 's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

8.2.2 CONSULTANT further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the City against any monetary damages and/or costs awarded in such suit

Provided that:

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

- that the Software or the equipment is used by the City in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the City's negligent act or omission, and
- that the City promptly provide CONSULTANT with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that CONSULTANT assumes responsibility under this section.

## IX. RECORDS

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.
- 9.2 CONSULTANT shall deliver all documents to the CITY, upon termination of the contract in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 9.3 The CONSULTANT shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.
- 9.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the Contract. As such, CONSULTANT understands and agrees that CITY will process and handle all such requests.

## X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this Contract and shall make such materials available to CITY, at CITY's Budget & Performance Assessment Department, 115 Plaza de Armas, San Antonio, Texas, at all reasonable times and as often as CITY may deem necessary during the Contract term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

## XI. LICENSES AND CERTIFICATIONS

- 11.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XII. CONFLICT OF INTEREST**

- 12.1 CONSULTANT acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY owned utilities. An officer or employee has "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, (that neither the CONSULTANT nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. If CONSULTANT is a business entity, the CONSULTANT representative further warrants and certifies that no CITY officer or employee nor any spouse, parent, child sibling or first-degree relative of a CITY officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XIII. INSURANCE**

- 13.1 CONSULTANT shall be responsible for insuring its employees and sub-recipients for Worker's Compensation or an Alternative Plan. If a Worker's Compensation Policy is maintained, then for the duration of this CONTRACT, CONSULTANT will attach a waiver of subrogation in favor of the CITY.
- 13.2 CONSULTANT shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the CITY be required to maintain any insurance coverage for CONSULTANT.

## **XIV. INDEMNITY**

- 14.1 Consultant covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines,

penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's activities under this Contract, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall promptly advise the City in writing of any claim or demand against the CITY or CONSULTANT known to Consultant related to or arising out of Consultant's activities under this Contract and shall see to the investigation of and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

- 14.2 It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Section, is an INDEMNITY extended by Consultant to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONSULTANT further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

#### **XV. AMENDMENT**

- 15.1 This Contract, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final agreement between the parties hereto.
- 15.2 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT and evidenced by passage of a subsequent City ordinance, as to CITY'S approval; provided, however, the Director of the Neighborhood Action Department shall have the authority to execute an amendment of this CONTRACT without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws, and in the following circumstances:

- a. In the event that a modification to the Scope of Services is required in Article III of this CONTRACT, so long as said modification does not change the overall purpose of the CONTRACT; and/or
  - b. In the event that a modification to the deliverables is required in Article II of this CONTRACT; and/or
  - c. In the event that the total amount to be paid under Section 2.1 of this CONTRACT needs to be reduced due to a change in the Scope of Services.
- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

#### **XVI. NOTICE**

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

##### **CITY**

City of San Antonio  
Attn: David Garza, Director  
Department of Neighborhood Action  
1400 S. Flores  
San Antonio, Texas 78204

##### **CONSULTANT**

Robert L. Watson, Ph.D., J.D.  
303 Clubhill Drive  
San Antonio, TX 78228  
Phone (210) 363-9392

#### **XVII. LEGAL AUTHORITY**

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this Contract on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

#### **XIII. SUBCONTRACTING AND ASSIGNING INTEREST**

- 18.1 Any subcontracts or assignments on interests entered into by **CONSULTANT** concerning work tasks for this **CONTRACT** shall be communicated in writing to **CITY** prior to the effective date of this **CONTRACT** and prior to commencement of any work subsequent to this **CONTRACT**'s effective date. **CONSULTANT** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **CONSULTANT** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this Contract and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 18.2 **CONSULTANT**'s subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any Contract with **CONSULTANT** arising from or in relation to this **CONTRACT**, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this **CONTRACT**. **CONSULTANT** shall indicate this limitation in all Contracts with approved subcontractors.
- 18.3 **CONSULTANT** agrees to notify **CITY** any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **CONTRACT** at the sole discretion of the **CITY**.
- 18.4 In no event shall such written consent, if obtained, relieve **CONSULTANT** from any and all obligations hereunder or change the terms of this **CONTRACT**.
- 18.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

#### **XIX. SUCCESSORS AND ASSIGNS**

- 19.1 This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, **CONSULTANT** may not assign this Contract without prior written consent of **CITY** in accordance with Section XVIII hereof.

#### **XX. NON WAIVER**

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the **CONSULTANT** from any covenants and conditions required in this **CONTRACT**.

#### **XXI. COMPLIANCE**

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of Contract, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
  - b. Section 504 of the Rehabilitation Act of 1973, as amended;
  - c. The Age Discrimination Act of 1975, as amended;
  - d. Title IX of the Education Amendments of 1972, as amended; and
  - e. All applicable regulations implementing those laws.

## **XXII. VENUE AND GOVERNING LAW**

- 22.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

## **XXIII. SEVERABILITY**

- 23.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future laws during the term of this Contract, including any extension and renewal hereof, it is the intention of the parties hereto that the remainder of the Contract shall not be affected thereby, and that in lieu of each clause or provision of the Contract that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the Contract.

## **XXIV. GENDER**

- 24.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **XXV. CAPTIONS**

- 25.1 The captions contained in this Contract are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this Contract.

#### XXVI. ENTIRE AGREEMENT

- 26.1 This Contract, together with its authorizing ordinance and exhibits, if any, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract. No other agreements, oral or otherwise regarding the matters of this Contract shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

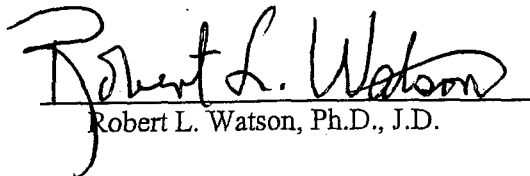
EXECUTED this the 24<sup>th</sup> day of April, 2006.

#### CITY

City of San Antonio, Texas

  
David D. Garza, Director

#### CONSULTANT

  
Robert L. Watson, Ph.D., J.D.

APPROVED AS TO FORM: 

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City Attorney